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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,101	09/10/2003	John Geoffrey Chan	99047	4327

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CHURCH & DWIGHT CO., INC.
LAW DEPT. - PATENTS
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PRINCETON, NJ 08543-5297

EXAMINER

CHIN, RANDALL E

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 07/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/659,101	Applicant(s) CHAN ET AL.	
	Examiner Randall Chin	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9, 13 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 13 and 14 is/are rejected.
- 7) ☒ Claim(s) 7 and 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>06232006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barton D 406,465 (hereinafter Barton).

Barton discloses a device comprising a housing formed from a first material and including a handle, a "brush" head (the roller), and a neck (i.e., any portion therebetween) extending between said handle and said brush head, characterized in that said housing further includes a first gripping member (Fig. 1) disposed along an exterior region of said housing, said first gripping member formed from a second material softer than said first material, said first gripping member having a generally convex shape (Fig. 2) contoured to match said housing and a first "substantially" concave recessed region (Fig. 5) on an exposed exterior surface thereof, and a second gripping member (Fig. 1) having a generally convex shape (Fig. 2) contoured to match said housing and formed from said second material, said second gripping member defining a second "substantially" concave recessed region (Fig. 5) on an exposed exterior surface thereof, whereby said first and second recessed regions are useful in assisting a user to grasp the handle during use of the device, said first and second

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gripping members and said first and second substantially concave recessed regions thereof having generally oval shapes when viewed in a plan view (Fig. 4).

As for claim 1 reciting in the preamble a "toothbrush," no structure has been set forth in the body of the claim to specifically define a "toothbrush." A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Also, as for claim 1 reciting that the device is "electric" (line 1) as well as includes a "positionable actuator" (line 3), it is the Examiner's position that it would have been obvious to one skilled in the art to have utilized or substituted Barton's handle on any **electric** device for simply improving one's grip thereon, such as, an electric power drill, electric screwdriver, flashlight, powered painting device, etc. and for controlling operation thereof. Further, Barton's gripping members would appear to be of a second material softer than the first material as shown, however, even assuming *arguendo* that this is not the case, it would have been obvious to one of ordinary skill in the art to have modified these gripping members such that they are softer than the first material for the purpose of making the gripping members more comfortable to a user and avoiding callous formation on the hands/fingers. As for claim 6, accordingly, they would be formed from the group consisting of elastomers and rubber-based materials.

As for claim 2, said housing of the device defines a longitudinal axis, and said first and said second gripping members symmetrically disposed on said housing with respect to said longitudinal axis (Figs. 1-3 and 5).

As for claims 3 and 4 reciting specific dimensions for the first gripping member and for the first recessed region, respectively, such claimed values are well within the level of ordinary skill to provide for (if not already, as such claimed values appear typical) through routine optimization. One skilled in the art would expect sizes or dimensions particularly and satisfactorily suited to the intended user(s). Further, any changes in size involving dimensions suitable for a human hand and/or fingers are deemed within the level of ordinary skill.

As for claim 5, as similarly stated above, it would have been obvious to one of ordinary skill in the art to have provided for the second material having a Shore A hardness between about 30 and about 99, a rather broad range, to satisfactorily suit the intended user(s) gripping comfort level.

As for claim 13, said first and second gripping members 16, 17 are separate and distinct from each other.

As for claim 14, said first and second gripping members are symmetrically disposed on a rearward side (i.e., at least **partially touching** "a" rearward side) of said housing so that said device may be used by both left-handed and right-handed individuals.

Allowable Subject Matter

3. Claims 7 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Chin whose telephone number is (571) 272-

1270. The examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Randall Chin
Primary Examiner
Art Unit 1744